

DOCUMENT RESUME

ED 345 353

EA 023 940

AUTHOR Stefkovich, Jacqueline A.
TITLE The Influence on New Jersey's Public High Schools of the U.S. Supreme Court's Decision in "New Jersey v. T.L.O."
PUB DATE Apr 92
NOTE 32p.; Paper presented at the Annual Meeting of the American Educational Research Association (San Francisco, CA, April 20-24, 1992).
PUB TYPE Reports - Research/Technical (143) -- Speeches/Conference Papers (150)
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Federal Courts; High Schools; Public Schools; *School Law; School Policy; *School Security; *Search and Seizure; *Student Rights
IDENTIFIERS *New Jersey; *New Jersey v TLO; Supreme Court

ABSTRACT

The Fourth Amendment to the U.S. Constitution guarantees "the right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures" by governmental officials. In a 1985 Supreme Court decision, "New Jersey v. TLO," students' privacy rights in public schools are afforded a lower standard of protection than is usually given to citizens. (TLO was a 14-year-old female student at Piscataway (New Jersey) High School and whose person was searched. She was accused of smoking cigarettes in violation of school rules. The results of the search implicated her in marijuana dealing.) This paper, based on an exploratory field study, investigated the U.S. Supreme Court's decision and its influence on early implementation of policies and practices in three New Jersey high schools. Findings revealed that, after the U.S. Supreme Court decision, there were few changes in written policies at the local level and these were restricted to locker searches and attributed to sources other than the "TLO" decision. There were also no increases in either the number of legal searches or the numbers and types of illegal searches. Most school searches were generally related to criminal rather than school violations; administrators were hesitant to conduct school searches; and districts had devised complicated procedures for conducting searches that act as a safeguard for students' rights. (13 references) (Author/RR)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

ED345353

THE INFLUENCE ON NEW JERSEY'S PUBLIC HIGH SCHOOLS
OF THE U.S. SUPREME COURT'S DECISION
IN NEW JERSEY v. T.L.O.

Jacqueline A. Stefkovich
Temple University

April 1992

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

☒ This document has been reproduced as
received from the person or organization
originating it.
☐ Minor changes have been made to improve
reproduction quality.

• Points of view or opinions stated in this docu-
ment do not necessarily represent official
OERI position or policy.

"PERMISSION TO REPRODUCE THIS
MATERIAL HAS BEEN GRANTED BY

Jo Stefkovich

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)."

Paper presented at the annual meeting of the American Educational Research
Association, April 24, 1992.

EA 023 940

ABSTRACT

The Influence on New Jersey's Public High Schools of the U.S. Supreme Court's Decision in New Jersey v. T.L.O.

The Fourth Amendment to the U.S. Constitution guarantees "the right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures" by government officials. New Jersey v. T.L.O., a U.S. Supreme Court ruling decided on January 15, 1985, is the most important case to date on the authority of public school officials to conduct searches of students on school grounds.

In the T.L.O. decision, the U.S. Supreme Court balanced the Fourth Amendment rights of students against school administrators' obligations to maintain a safe school environment. As a result of this decision, students' privacy rights in public schools are afforded a lower standard of protection than is usually given to citizens.

As a U.S. Supreme Court decision, New Jersey v. T.L.O. set a precedent for the entire country. By overturning a New Jersey lower court decision, the Supreme Court, in essence, eased the standard that school administrators need to conduct a legally reasonable school search. Perhaps more important than its legal ramifications, however, are the implications that this decision has for school practice.

This paper, based on an exploratory field study, investigated the U.S. Supreme Court's decision in New Jersey v. T.L.O. and its influence on early implementation of policies and practices in three New Jersey high schools. Findings revealed that, after the U.S. Supreme Court decision, there were few changes in written policies at the local level and these were restricted to locker searches and attributable to sources other than the T.L.O. decision. There were also no increases in either the number of legal searches or the numbers and types of illegal searches.

Perhaps more interesting, findings revealed that most school searches were generally related to criminal--rather than school--violations, that administrators were hesitant to conduct school searches, and that districts had devised complicated procedures for conducting searches which act as a safeguard for students' rights.

Concerns about abuse--among the media, legal commentators, and dissenting justices--mostly appear to have been unfounded, at least as of the time of my field research. When I investigated the real world of public education, I found neither the abuses nor the conflicts that so many had predicted.

The Influence on New Jersey's Public High Schools
of the U.S. Supreme Court's Decision
in New Jersey v. T.L.O.

The Fourth Amendment to the U.S. Constitution guarantees "the right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures" by government officials. New Jersey v. T.L.O., a U.S. Supreme Court ruling decided on January 15, 1985, is the most important case to date on the authority of public school officials to conduct searches of students on school grounds.

In the T.L.O. decision (1985), the U.S. Supreme Court balanced the Fourth Amendment rights of students against the school administrator's obligation to maintain a safe environment. As a result of this decision, students' privacy rights in public schools are afforded a lower standard of protection than is usually given to citizens.

Under traditional Fourth Amendment analysis, for a search to be legal, police officers must have "probable cause to believe that a crime has been committed and that evidence of the crime will be found in the place to be searched" (Brinegar, 1949; Beck, 1964). After T.L.O., public school officials need only have a "reasonable suspicion" that a law or school rule has been violated. The latter standard is far more lenient.

As a United States Supreme Court decision, New Jersey v. T.L.O. set a precedent for the entire country. By overturning a New Jersey lower court decision, the Supreme Court, in essence, eased the standard that school administrators need to conduct a legally reasonable school search. Perhaps more important than its legal ramifications, however, are the implications that this decision has for school practice.

It is these implications for school practice that provide the focus for this

study. This paper, based on an exploratory field study, investigated the U.S. Supreme Court's decision in New Jersey v. T.L.O. and its influence on early implementation of policies and practices in three New Jersey high schools.

This paper is divided into five parts. Part one describes the legal issues surrounding student searches in public schools by examining the T.L.O. case and related law. Part two discusses the rationale for this study. Part three looks at the methodology for the field study. Part four presents the study's findings. Part five looks at implications for further research.

Legal Background

Below is a discussion of the facts of the T.L.O. case and its procedural history.

Facts of the Case

The incident that sparked the T.L.O. case took place on March 7, 1990 when the vice principal of Piscataway (NJ) High School searched the purse of T.L.O., a female student who was accused of smoking cigarettes in violation of school rules. T.L.O., a fourteen year old freshman at the time of the incident, was called to the vice-principal's office after a teacher reported seeing her and another female student holding a lighted cigarettes in the women's lavatory. Although the school permitted smoking in certain restricted areas, smoking in restrooms was a violation of school rules.

The vice-principal questioned both students. T.L.O.'s companion admitted to smoking. T.L.O. said that she had not been smoking and that she did not smoke at all. The vice-principal then demanded to see T.L.O.'s purse. Opening the purse, he found a pack of cigarettes and some rolling papers, the type generally used in smoking marijuana.

Upon further inspection, the vice-principal found some marijuana, a pipe, plastic bags, forty dollars, mostly in one dollar bills, an index card with the words "people who owe me" written on it followed by a list of names and dollar amounts, and two letters implicating T.L.O. in marijuana dealing. T.L.O. was suspended from school for ten days, three days for smoking cigarettes and seven days for possessing marijuana. Her companion was required to attend a three-day smoking clinic.

Procedural History

The State brought delinquency charges against T.L.O. Under the exclusionary rule, evidence seized illegally may not be introduced into evidence in a subsequent judicial proceeding. At her trial, T.L.O. filed a motion to have the evidence suppressed on the ground that it had been seized in violation of her Fourth Amendment right to be free from unreasonable search and seizures. T.L.O. considered the search to be unreasonable in that nothing in her purse could prove that she had been smoking.

On August 8, 1983, the New Jersey Supreme Court ruled that the search had violated T.L.O.'s Fourth Amendment rights. While the New Jersey high court believed that "reasonable grounds" was the appropriate standard to use in this case, it maintained that the assistant principal, had not had "reasonable grounds" to believe that T.L.O. was carrying evidence of criminal involvement or involvement in activities that would seriously interfere with school discipline.

The New Jersey Supreme Court ruled, therefore, that the evidence found in T.L.O.'s purse had to be excluded, and set aside the conviction that been based on that evidence. The State of New Jersey, having lost in the New Jersey Supreme Court, appealed to the United States Supreme Court, claiming broadly that the exclusionary rule should not apply to searches made by public school administrators.

After hearing oral arguments on that issue, the United States Supreme Court scheduled reargument on a different, somewhat narrower, question: whether, in opening T.L.O.'s purse, the assistant principal had violated the Fourth Amendment. And, on January 15, 1985, the U.S. Supreme Court issued a ruling that overturned the New Jersey Supreme Court's decision, holding by a 6-3 majority that the search had been reasonable. The majority opinion was accompanied by four concurring or dissenting opinions.

The U.S. Supreme Court decision in New Jersey v. T.L.O., once and for all, resolved several important legal issues that, in the past, had not been clearly determined. The Court maintained that students in schools have Fourth Amendment rights and that a "reasonable suspicion" standard should be used in determining the constitutionality of searches similar in magnitude to T.L.O. (T.L.O., 1985:325).

Thus, while the U.S. Supreme Court's decision in T.L.O. resolved several important educational and legal issues, it left unanswered other important questions. For example, it is still unclear how this "reasonable suspicion" standard should be interpreted and whether it applies to searches involving violations of minor, possibly even trivial, school rules or to searches based on generalized rather than individualized suspicion.

It is also unclear whether the "reasonable suspicion" standard can be extended to other types of searches, such as those less intrusive than T.L.O. and those more intrusive than T.L.O. We also remain unsure whether the "reasonable suspicion" standard is appropriate in searches that involve the police. This research examines these implications of the T.L.O. decision and how the decision relates to practices in three New Jersey High Schools.

Rationale for the Study

The decision in New Jersey v. T.L.O. was an important, long-awaited ruling that apparently gave public school personnel the leeway they wanted to search students on school premises more easily. As I began my field research in three New Jersey high schools, I expected that this long-awaited decision from the highest Court in the land would have to influence local level action. Surely changes in policies and practices were bound to occur.

I began my field research with several expectations. I felt sure that the schools I visited would have written policies on school searches and would have modified these policies or added new ones after the U.S. Supreme Court decision in T.L.O.

I believed school administrators would have conducted more searches after T.L.O. than before the ruling and that they would apply the "reasonable suspicion" standard not only to searches of similar magnitude as T.L.O., but to searches less, and perhaps more, intrusive than T.L.O.

I thought that the basis for school searches might change, that those conducting school searches would most likely extend the reasonable suspicion standard to fit circumstances beyond the high Court's narrow interpretation in T.L.O. Finally, I believed that police might have more or different involvement in the public schools after T.L.O. My rationale for these expectations is described below.

Changes in Written Search Policies

For several reasons, it seemed likely that the schools I visited would have formal, probably written, search policies even before T.L.O. Earlier surveys of schools nationwide indicated that most schools have some type of written search policies. (Hogan, 1985) I was also became aware of several districts that had established search policies after the T.L.O. decision.

For instance, the Summit School District, which is in the same county as one of the schools that I visited, established guidelines that specifically referred to the T.L.O. decision. Another district, Ephrata, in neighboring Pennsylvania, developed policies immediately after the T.L.O. Court's ruling in response to concerns about their search procedures as voiced by the American Civil Liberties Union of Pennsylvania. (Education USA, 1986)

Also, from my experiences in a wide variety of New Jersey schools, I knew that it was common for local districts in that state to have written policies on issues such as school discipline, violence and vandalism, and drug and alcohol abuse. Since school searches are closely related to these other issues, it seemed likely that they, too, would be the subject of a formal school policy.

The fact that there had been considerable litigation regarding school searches strengthened my argument. (Medlin, 1976; O'Hara, 1984). If for no other reason than avoiding a lawsuit, it seemed likely that districts would want some written standards that had been approved by their boards and by their school attorneys.

Finally, it seemed equally likely that any old policies would be revised. The United States Supreme Court's decision in T.L.O. had overturned the New Jersey Supreme Court's ruling. Not only did it change the law in New Jersey,

it presumably rendered obsolete policies based on the former law. School districts would need to revise their policies accordingly. In light of all these factors, I thought that the schools I visited would have school search policies and would have either revised these policies or developed new ones after T.L.O.

Increased Number of Searches

In addition to implementing policy changes, I believed that school personnel would conduct more searches after the U.S. Supreme Court's decision in T.L.O. than they had before the ruling. I based this assumption on the fact that the reasonable suspicion standard established by the Court is much less stringent than probable cause. And, unlike the New Jersey court, the U.S. Supreme Court's loose definition of "reasonable suspicion" leaves educators with very broad discretion in conducting student searches.

In addition, the Justices themselves believed that T.L.O. would result in changes. For example, Justice White noted that the "reasonable suspicion" standard used in T.L.O. would: "... spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their (students') conduct according to the dictates of reason and common sense." (T.L.O., 1985: 343)

This passage appears to assume that school personnel are more reluctant to search if they have to worry about the necessities of "probable cause." Freed from such concerns by the decision, administrators would presumably conduct more searches.

I believed that school officials would extend the reasonable suspicion standard in T.L.O. to different types of searches, those less intrusive than T.L.O. and, perhaps those more intrusive than T.L.O. It seemed only logical that

BEST COPY AVAILABLE

this lesser standard would be applied to mildly intrusive searches, namely locker searches. In addition, New Jersey had passed legislation that gave school officials more leeway to search lockers if students were notified beforehand. (N.J.S.A., 1985)

Nationwide, there had also been instances of school officials extending the T.L.O. reasonable suspicion standard beyond the narrow interpretation of the U.S. Supreme Court to include searches even more intrusive than that in T.L.O., most notably, strip searches. In strip searching cases in Ohio, school administrators cited the T.L.O. decision as justification for their actions even though the U.S. Supreme Court, in T.L.O., had maintained that searches could not be "excessively intrusive in light of the age and sex of the student and the nature of the intrusion" (Jussim, 1985).

A Broadened Basis for Searching

I believed that school administrators would broaden their basis for conducting searches after T.L.O. I expected that the reasonable suspicion standard in T.L.O. might be used, as Justice Stevens feared, to enforce "even the most trivial school regulation(s)" or that it might be extended to searches based on only generalized suspicion. (T.L.O., 1985:377).

I based this first assumption on the fact that the decision itself addressed violation of a school rule--cigarette smoking. Also, the Court was careful not to distinguish between violation of a school rule and violation of the law. Nor did the justices attempt to differentiate among various types of school rules. In addition, both Justices Stevens and Brennan, in their dissenting opinions, were concerned about the broad sweep of the majority opinion. Justice Stevens cautioned that:

For the Court, a search for curlers and sunglasses in order to enforce the school dress code is apparently just as important as a search for evidence of heroin addiction or violent gang activity. (T.L.O., 1985:377)

Extension of the Reasonable Suspicion Standard

Both Justice Brennan's dissent and articles and commentary published after the high Court's decision expressed concerns as to the vagueness of the reasonableness standard. For example as, Justice Brennan feared :

. . the amorphous "reasonableness under all the circumstances" standard freshly coined by the Court today will likely spawn increased litigation . . .

(a) school system faced with interpreting what is permitted under the Court's new "reasonableness" standard would be hopelessly adrift as to when a search may be permissible. (T.L.O., 1985:365, 366.)

I believed that school administrators might extend T.L.O.'s "reasonable suspicion" standard to searches using generalized, rather than individualized, suspicion. This was done in East Rutherford, New Jersey where the school board passed a resolution requiring blanket urine tests of students in order to detect drug use --a policy against which the New Jersey court later ruled. (Odenheim, 1985)

Changes in Police Involvement in School Searches

I thought that there would be more, possibly inappropriate, police involvement in the schools after T.L.O. I based this assumption on the fact that the T.L.O. decision does not address the legality of school searches instigated by the police. In the T.L.O. case, police were involved only after school authorities initiated the search and found contraband.

Police searches of citizens at large generally require the more stringent "probable cause" standard while T.L.O. permits school officials to search with only "reasonable suspicion." Some commentators maintained that police may be tempted to take advantage of school administrators' prerogatives in using this lower standard.

For example, in their amicus brief, the American Civil Liberties Union expressed concerns, fearing that school officials would search students under a lessened (i.e., reasonableness) standard and then would hand over the evidence to police on a "silver platter." (Goodman, 1984: 22)

While I did not necessarily expect school officials to conduct searches on a whim, it did seem likely to me that the police might enlist school officials to conduct searches of students with only "reasonable suspicion." This could be done through "tips" from the police as well as through actual police requests to search.

Field Work Methodology

Early on in my research, I decided that I wanted to take an in-depth look at how schools reacted to the U.S. Supreme Court's decision in T.L.O. Since the issues in this case were so complicated, I knew that a broader-based approach, such as a survey, would simply not give me the kind of rich detail needed to understand the multitude of factors affecting school-level responses to this decision.

I subsequently chose a case study approach involving observation, document review, and intensive interviews with a wide variety of persons. I conducted some fifty interviews with board members, administrators, teachers, counselors, students, and parents. I also reviewed documents--school board policies, student handbooks, teachers' manuals--for policy statements regarding school searches before and after the U.S. Supreme Court's decision in T.L.O. I attempted to assess the numbers and types of searches before and after T.L.O. through interviews and analysis of local incident reports and state-mandated violence and vandalism reporting forms.

The technique that I used to select the schools to be studied was what Merriam (1990) refers to as purposive sampling i.e., choosing a sample from which one can learn the most--discover, understand, and gain insight. I realized that the results of this exploratory study would not be generalizable, but I also knew that finding similarities in very different types of districts would strengthen my conclusions. I thought that a rural regional high school with moderate resources might be a good contrast to a wealthier school in suburbia and that a larger, urban district serving a less wealthy population might provide a good balance to the two smaller districts.

To minimize differences traceable to state law or policy, I decided to choose several schools in a single state. I selected New Jersey as that state because T.L.O. arose there. I anticipated that because of this early involvement, New Jersey schools might be ahead of others in their response to the U.S. Supreme Court's decision. Also, since the U.S. Supreme Court reversed the New Jersey Supreme Court's decision in T.L.O., it seemed likely that New Jersey schools would change their school search policies and practices accordingly.

Conducting research in New Jersey also afforded me several distinct advantages for local level fieldwork. Having worked in two New Jersey districts and then at the state's Department of Education for eight years, I knew a lot about schools in New Jersey. I had consulted in about a third of the state's over 600 districts and had a clear idea of the different types of places that I wanted to visit.

I also had a variety of contacts in the schools. Upon hearing about my research, several professional acquaintances suggested their districts as possible sites. I listed several others that I thought would be appropriate for purposes of this study. Thus, I was fortunate in that I did not have to sacrifice the type of district I wanted to study in order to obtain the assistance of a "key informant", i.e., some particularly knowledgeable person whose insights could help me understand what I was observing (Patton, 1980). My past experiences in New Jersey afforded me the luxury of having both.

I also knew that the state classified schools in two ways. The first involved community types such as urban, suburban, and rural. The second involved a district factor grouping (dfg) based on various socio-economic factors. I chose schools that reflected each of these community types as well as a variety

of other qualities considered in the district factor grouping. For instance, one school was in a wealthy community while the other two were in middle-class and poor communities. In addition, I selected districts that varied according to composition of the student body--racial and ethnic background, post-secondary goals and Scholastic Aptitude Test scores.

I carefully avoided schools that I believed would be atypical to an extreme. For example, I steered away from special schools such as vocational-technical centers, and schools for the arts, sciences, or handicapped populations. I avoided Newark and Jersey City because they are so much larger than any of the state's other cities. Besides being non-representative, I felt that their immense size (consisting of from six to thirteen large high schools) would be unmanageable given the limited scope of my study. Similarly, I believed that a very small school--having less than 300 students--could not offer the diversity I wished to examine.

I also decided not to use districts that had been especially progressive in their response to the T.L.O. decision or districts that had extensive negative publicity about searches or about in-school drug use as I believed their responses also be atypical.

I selected districts that were cooperative and willing to support my research. I felt that this was a prerequisite to gaining entry and, once in, learning as much as I could about the school. My experience in New Jersey and my selection of "cooperative" districts were potential sources of bias, however. I believe that diversifying my sample according to New Jersey's grouping system provided some control for such bias.

I also controlled for my own personal bias and for within-school biases by using triangulation techniques (Guba, 1981) (which involved collecting similar

data from as many different sources as possible and interviewing a wide range of persons to corroborate my findings) and by sharing my findings with other persons knowledgeable about social science research before my conclusions were finalized.

I assured district administrators that the real names of the districts would not be used in this paper. Hence, the names that I did choose to use--Garden City, Indian River, and Lincoln--are fictitious. I also told those who I interviewed at the local level that their names would remain confidential.

From the outset, two cautionary notes are in order. First, this research looks only at early local-level responses to the T.L.O. decision. My field research was conducted during the fall of 1985, roughly nine to eleven months after the U.S. Supreme Court decision came down. Thus, it is possible that in the time since my site visits there have been changes in local-level search procedures that my field research did not identify.

Second, this research was conducted in New Jersey, the state where the T.L.O. case arose. While restricting my research to New Jersey carries definite advantages--as previously mentioned --it is also important to realize that the research may not be generalizable to other states. Moreover, the issues surrounding the T.L.O. decision are imbedded in a rich tapestry of New Jersey state laws and procedures and a history of pro-student-rights positions in cases such as the New Jersey Court's decision in T.L.O.

Findings

These findings are based on case studies of three very different New Jersey high schools. One school, Garden City, is a multi-cultural urban school, of approximately 4,000 students coming from some 36 different countries. Most of

these students are from poor families. The second school, Lincoln, is a wealthy suburban school with most of its 840 students entering college upon graduation. The third school, Indian River, is rural with approximately 850 students. Its socio-economic status (as indicated by its district factor grouping) falls midway between Garden City and Lincoln.

After studying these three schools, I found that most of the expectations I held prior to conducting my field research were not met. To my surprise, I discovered that there were only a few changes in school search policies and practices in the New Jersey high schools where I conducted my research and not all of these could be linked to the T.L.O. decision.

Indeed the only formal school search policies that the districts had were restricted to locker searches, and these types of search policies were based on New Jersey court cases and legislation unrelated to T.L.O. (Engerud, 1983). The only written policy statement directly related to the U.S. Supreme Court's decision in T.L.O. was used in Garden City, but was initiated by a very active County Prosecutor's Office (and not by the school district itself). I also discovered that, at least in the three districts I visited and during the time period in question, there were very few searches of any kind--legal or otherwise--either before or after the T.L.O. decision. Of the few changes that did occur, I found that the only school where students and staff perceived some within-school drug problems was also the school that experienced the greatest post-T.L.O. changes. These changes included increases in the number of individualized searches and changes in the nature of police involvement in school searches.

Contrary to the incident that sparked T.L.O., I found that most school searches are generally related to criminal, rather than merely school, violations (such as smoking cigarettes). Administrators in the schools I visited stated

that they would not search a student's purse only for cigarettes. School officials also reported that, for the most part, they did not search students without individualized suspicion. Nor were they likely to conduct searches more intrusive than the purse search in T.L.O.

In general, I found that the schools I visited were not adversarial settings where administrators abuse students' rights in order to enforce discipline. In some instances, school officials actually appeared to err on the side of caution. The school systems I visited had detailed, largely unwritten, procedures for conducting searches, which seemed to act as a safeguard to protect students' rights.

These procedures included searching only where there exists individualized suspicion, searching only after a number of reliable tips or after eye-witness accounts, asking consent from the student or parent prior to searching, and having males search male students and females search female students.

Likewise, I discovered a multitude of reasons, apart from the court decision, that prevented administrators from either conducting more searches or from abusing students' rights. These had to do with factors such as: likely adverse reactions from parents, board members and the students themselves; a lack of drugs and alcohol--the target of most searches--in the school itself; and a genuine respect, on the part of school administrators and staff, for students' rights. These findings are described in more detail as follows.

Changes in Written Search Policies

I had read about search policies established in other nearby schools and assumed that the schools I visited might also have written policies. What I did find was that none of the schools had written general search policies. All had locker search policies, but they were, for the most part, a response to New

Jersey's locker legislation and not to T.L.O.

Indeed, the only allusion to T.L.O. was Garden City's policy regarding individualized locker searches, an ironic twist in that the Supreme Court specifically stated that the judgment in the T.L.O. case did not extend to searches of "lockers, desks, or other school property provided for the storage of school supplies." In addition, while Garden City had not developed their own search policies, they did use a policy manual provided by their County Prosecutor's Office which directly mentioned the T.L.O. decision.

Increased Number of Searches

I expected to find that schools would conduct more searches after T.L.O. While I did find a substantial increase in the numbers of searches in one of the schools that I visited, I also found that the schools in my study simply did not search that much at all--either before or after the T.L.O. decision.

The largest number of total search incidents--those occurring in Garden City--represent only 3.4 percent of the total student body (forty searches). See the chart below. In addition, most of these searches were purse/pocket searches based on eye-witness accounts or relatively non-intrusive (individualized) locker searches.

Estimated Numbers of School Search Incidents
Per Month Before and After the T.L.O. Decision

	The Semester Before <u>T.L.O.</u>	The Semester After <u>T.L.O.</u>	Two Semesters After <u>T.L.O.</u>
Garden City	3.6	2.6	2.6
Indian River	1.1	1.3	3.5
Lincoln	0.5	0.5	0.8

This chart reflects the numbers of searches the semester prior to the T.L.O. decision and two semesters after the T.L.O. decision. While the number of searches in Garden City and Lincoln decreased and increased slightly, respectively, searches in Indian River rose sharply from September until my site visit in late October 1985. (Indian River had already conducted seven searches from September through October 1986.)

A Broadened Basis for Searching

Contrary to my expectations, in the three schools that I studied, searches were rarely conducted for mere violations of school rules. All but one of the search incidents were for contraband, namely drugs (marijuana) and alcohol. The one search for violation of a school rule, in Lincoln, was a relatively non-intrusive locker search. Officials in all three schools said that they had not searched students for cigarettes and would not do so in the future.

In addition, administrators in all the schools reported that they did not conduct blanket searches (except for administrative purposes, i.e., end-of-the-year clean-ups.) Indeed, administrators generally required individualized suspicion to check students' lockers. Furthermore, administrators did not conduct any other types of blanket searches. The only exception here was Indian River's searches prior to school field trips. However, these occurred before T.L.O. no less than they did after T.L.O.

Finally, administrators always had what appeared to be "reasonable suspicion" before conducting searches. And, to a large extent, these school officials interpreted the standard at least as strictly as the U.S. Supreme Court, or even more so. For instance, Garden City administrators rarely searched without an eye-witness account. Administrators at Lincoln and Indian River High

Schools expected at least multiple tips from reliable sources. Thus, the basis upon which searches were conducted before T.L.O. was not abusive of students' rights and this did not change after T.L.O.

Extention of the "Reasonable Suspicion" Standard

I expected to find that schools would extend the reasonable suspicion standard to other types of searches, including searches less intrusive than the purse search in T.L.O. My findings revealed that none of the schools reported conducting any searches more intrusive than a purse/pocket search. And, even in these instances, administrators asked the students to empty their own pockets. In addition, all administrators in all schools reported that they had never strip-searched a student.

The most intrusive search that I found was an aborted strip search in Lincoln for money. Here, the student was asked to strip, but the money was found in her shoes--the first thing she removed. If the money had not been found, this search would have most likely become a strip search. This search, however, occurred only after parental consent to--indeed, enthusiastic endorsement of-- a strip search. (The parent not only consented to the search, but suggested to the administrator that he strip search the student.)

As far as searches less intrusive than T.L.O. , all three schools used the "reasonable suspicion" standard in conducting non-administrative locker searches. This procedure, however, emerged not from T.L.O. as much as from New Jersey's locker legislation. Thus, contrary to the fear of some commentators and dissenting justices, the "reasonable suspicion" standard in T.L.O. was not extended to include more intrusive searches. It was used for less intrusive searches, but this was due to the locker legislation and not to T.L.O.

Changes in Police Involvement in School Searches

The nature of police involvement in school searches changed in one high school, Indian River, after the T.L.O. decision. This change was based on two incidents. One involved a "tip" from the County Prosecutor's Office that certain students were believed to possess drugs. The other involved police requesting school authorities to search a student's locker.

In light of the fact that police involvement was one of the issues left unresolved by T.L.O., it would seem that this change could, at least in part, be traced to the decision. On the other hand, another district Garden City--resolved the question of police involvement by requiring the more stringent probable cause standard in searches involving the police. This action, too, was prompted by the County Prosecutor's Office.

Why So Few Changes Occurred

There are at least four general explanations for the lack of change occurring in the schools I studied. They include: factors within and outside each school; the influence of state law and local policies; the accuracy of some of the basic assumptions underlying the U.S. Supreme Court decision in T.L.O.; and, finally, the timing of this study.

Many Factors Within and Outside the Schools Influenced Their Reactions to The Court Decision: The findings of this study reinforce the view that the ways schools react, or choose not to react to changes in the law, are influenced by a myriad of factors other than the actual court decision. This is in concert with Dolbeare and Hammond's (1971) study of the impact of U.S. Supreme Court school prayer decisions. These authors found that community response directly influenced the school's reaction to the Court's decision.

Similarly, in this study, it turned out that pressures from outside the school, such as potential negative responses from important groups such as parents, students, and school board members greatly influenced how the school reacted to the U.S. Supreme Court's decision in T.L.O. In addition, in the case of Garden City and Indian River, outside factors such as a strong County Prosecutor's Office appear to have affected the school's search policies and procedures before and after T.L.O.

Several factors within the school appear to have inhibited changes in school search policies and procedures. For instance, the principal in Garden City claimed that the keen sense of pride in that high school--and the importance of athletic achievement--influenced students' behavior, and hence, limited the school's need to conduct searches. In Lincoln, students who were not part of the college-preparatory ethic--who did not bother to conceal their drug and alcohol habits--were, as one student said, "labelled."

The school administration's predisposition toward students in general also influenced strongly the school's reaction to T.L.O. Administrators in each of the three districts that I visited were exceptionally sensitive concerning students' privacy and cited this sensitivity when asked to explain why changes in policies and practices had not been greater after T.L.O.

For example, in Garden City, the assistant housemaster compared a student's rights in school to the rights that an adult has in society. In Lincoln, the school's commitment to students' rights was demonstrated by administrative, faculty, and community support for an exceptionally forthright school newspaper. One of the school's goals in Indian River was "[coordinating] efforts among administrators, parents and students." This was further demonstrated by students' active participation on the board of education.

State Law and Local Policies Diminished the Decision's Influence: In T.L.O., the majority recognized other factors that may influence search policies and practices. One such factor is each state's prerogative in establishing standards that may be even more protective of students' privacy than those set by the U.S. Supreme Court.

In addition to these "more demanding standards," other state or local policies may have a profound influence on local-level decision-making. For example, New Jersey schools have long considered lockers to be "school property". Thus, while none of the districts had written general search policies, all had written locker search policies. In Lincoln, where there was a post-T.L.O. search based on generalized suspicion, it was a locker search. And, when the number of searches increased in Indian River, the increase was due chiefly to locker searches.

Finally, other state and local policies less directly related to school searches affected local-level decision making. All three districts had strict procedures for drug and alcohol abuse even before T.L.O. While these were mandated by state law, the local boards of education added additional features such as reporting all drug and alcohol offenses to the police. Nothing in T.L.O. required the schools to change these procedures, and it is therefore not so surprising that no changes were, in fact, made.

The Justices' Assumptions About Schools Were Inaccurate: The findings of this study could mean that the majority of the justices (and some of the commentators) held misconceptions about the nature of schools. In other words, the expectations surrounding this research did not hold true because they were based on faulty premises.

For example, the T.L.O. Court weighed the rights of students against the need for administrators to maintain a safe school environment. By the very nature of this balancing test, the U.S. Supreme Court assumed an adversarial relationship between school officials and students.

My findings were quite to the contrary. For the most part, school authorities seemed to bend over backwards to protect students' privacy and to foster and preserve an amicable, mutually respectful, relationship with students. In the three schools that I visited, the relationship between school authorities and students seemed more reflective of the sentiments reflected by Justice Powell and O'Connor in their concurring opinion, which said:

Rarely does this type of adversarial relationship exist between school authorities and pupils. Instead, there is a commonality of interests between school authorities and pupils. The attitude of the typical teacher is one of personal responsibility for the student's welfare as well as for his education. (T.L.O., 1985: 349, 350)

In addition, the majority opinion, citing the 1978 Safe School Report to Congress, asserts that "drug use and violent crime in the schools have become major social problems." (T.L.O., 1985: 339) I do not have the evidence to refute that statement nationwide, and surely there are many schools and communities where substance abuse is a serious problem. However, neither my review of violence and vandalism reports nor my intensive interviews with administrators, teachers and students revealed that this was the case in the schools that I studied.

In Garden City and in Lincoln, most of the people that I interviewed mentioned that drug--and alcohol-- abuse was a problem with their students, but none believed that it was a widespread problem in the school. In Indian River, the one school out of the three where students and staff perceived within-school drug problems, post-T.L.O. changes were greater. There were changes in the

nature of police involvement in these schools and increases in the number of post-T.L.O. searches. On the other hand, these searches were individualized and students as well as staff attributed the problems to "a few bad apples".

Furthermore, while the majority of searches were conducted for contraband--drugs and alcohol--the schools also did not handle these problems exclusively through searching. Lincoln and Indian River had strong counseling and prevention programs and Garden City assigned school social workers to assist student offenders and their parents. Thus, contrary to what the T.L.O. decision seems to imply, there is more often than not a mutually respectful relationship rather than an adversarial one between school officials and students.

Timing of the Study: Change takes time, a lot of time. Making policy and changing policy are difficult, time-consuming procedures. For instance, it was years before the 1954 Brown decision made a real difference in American education--that metamorphosis is still occurring in some Southern and Northern urban school systems.

Similarly, earlier studies on the effect of Title I programs showed little change (Murphy, 1971). It was a good ten years later that the influence of this program was fully realized. Likewise, this study may simply have been conducted too soon to tell if changes occurred after the T.L.O. decision. A follow-up study may be needed.

Implications for Policy and Practice

One important lesson that emerges from my research is that schools which perceive themselves as having difficulties with drug (and perhaps, alcohol) use and/or distribution may be more inclined to change their post T.L.O. school

search practices than those schools which do not hold this perception.

Such was the case in Indian River as opposed to Garden City and Lincoln High Schools. In the former, the numbers of school searches increased dramatically after T.L.O. Similarly, there were instances of more active involvement from the police and the County Prosecutor's Office. In the latter, changes were either non-existent or not nearly as great as those in Indian River.

A second lesson is that court rulings, even from the U.S. Supreme Court, will not necessarily result in changes at the local level, at least in the short run. The relationship between the courts and the schools may be different than expected. This appears to be the case with respect to T.L.O. and early responses in three New Jersey public high schools.

It also seems that, contrary to popularly-conceived notions, there is not a one-to-one relationship between what happens at the U.S. Supreme Court level and what happens at the local district level. A number of factors--including state and local policies and long-established local practices--serve to mediate between judicial decrees and local policy and practice.

A third lesson that emerges from this research is that high schools are complex organizations subject to many pressures, only one of which is a U.S. Supreme Court decision. Court rulings are only one of many factors that influence local district action. For instance, forces from within and outside the school more strongly influenced the school's reaction to T.L.O. than did the actual Supreme Court decision. These forces included reactions from students, parents, board of education members, and, at least in one instance, the County Prosecutor's Office.

If nothing else, what all this says is that rulings--even from the highest Court in the land--must be put into perspective with countless other factors that

affect educational practice. While the high Court's decisions may be important, they are not the be-all and end-all of public education.

References

- _____. (1986). Districts learn the hard way on searches. Education U.S.A., Jan. 13, 153.
- Dolbeare, K. & Hammond, P.E. (1971). The school prayer decisions: from court policy to local practice. Chicago: The University of Chicago Press, 100-129.
- Flygare, T.J. (1985). High court approves searches of students, but ducks many tough issues. Phi Delta Kappan, 66(7), 504-505.
- Goodman, B., Karpatkin, D.H. & Sims, C.S. (1984). Brief of the American Civil Liberties Union and the American Civil Liberties Union of New Jersey in support of affirmance. Newark, NJ: 1984.
- Guba, E.G. & Lincoln, Y.S. (1981). Effective evaluation. San Francisco: Jossey Bass, 106-107, 186.
- Hogan, J.C. & Schwartz, M.D. (1985). The fourth amendment and public schools. Whittier Law Review, 7(2), 541-548.
- Jussim, D. (1985). Court ruling spurs student searches. Civil Liberties, (354), 6.
- Medlin, K.C. (1976). Search and seizure in the public schools. Louisiana Law Review, 36, 1067-1074.
- Merriam, S.B. (1991). Case study research in education. San Francisco: Jossey-Bass, 48-49.
- Murphy, J.T. (1971). Title I of ESEA: The politics of implementing federal education reform. Harvard education review, 41(1), 64-92.
- O'Hara, J.U. (1984). Search and seizure analysis in school settings. West's Education Law Reporter, 13(1), 1-7.
- Patton, M.Q. (1980). Qualitative evaluation methods. Newbury Park, CA: Sage, 182-183.
- United States Constitution, Amendment IV.

CASES AND STATUTES

Cases:

Beck v. Ohio, 379 U.S. 89 (1964).

Brinegar v. United States, 338 U.S. 160 (1949).

Brown v. Board of Education, 347 U.S. 483 (1954).

New Jersey v. T.L.O., 469 U.S. 325 (1985).

Odenheim v. Carlstadt-East Rutherford Board of Education, 510 A.2d 709
(N.J. Super. 1985).

State in the Interest of T.L.O., N.J. Super. A.D., 463 A.2d 493 (1983).

State v. Engerud, N.J. Super. A.D., 463 A.2d 934 (1983).

Statutes:

N.J.S.A. 18A:36-19.2 (1985).